

STATE OF MICHIGAN
COURT OF APPEALS

MATTHEW J. DYER and MARY JO DYER,

Plaintiffs-Appellants,

v

FLAGSTAR BANK FSB,

Defendant-Appellee.

UNPUBLISHED

January 27, 2005

No. 250877

Kent Circuit Court

LC No. 01-008497-CP

Before: Zahra, P.J., and Neff and Cooper, JJ.

PER CURIAM.

Plaintiffs appeal by right from a final order summarily dismissing their claims and denying them leave to file their first amended complaint, wherein they allege that defendant's practice of charging a document preparation fee in residential real estate mortgage transactions violates the Michigan Consumer Protection Act (MCPA), MCL 445.90 *et seq.* We affirm.

Plaintiffs' original complaint alleged that when defendant charged them a \$225 "document preparation fee," purportedly for preparing the note and mortgage in connection with the transaction, defendant engaged in the unauthorized practice of law. While the matter was pending in circuit court, our Supreme Court decided *Dressel v Ameribank*, 468 Mich 557; 664 NW2d 151 (2003), in which the Court held that a mortgage lender charging a fee for the completion of standard mortgage documents does not constitute the unauthorized practice of law. *Id.* at 559. Accordingly, the trial court granted defendant's motion for summary disposition on plaintiffs' claims.¹ Plaintiffs moved for leave to file a first amended complaint, therein claiming that defendant violated the MCPA, specifically MCL 445.903(z), in that the document preparation fee was grossly excessive, as well as claiming unjust enrichment on the theory that defendant also violated MCL 438.31a.² The court denied plaintiffs' request for leave finding that allowing their proposed amendment would be futile because residential mortgage loan transactions are exempted from the MCPA under MCL 445.904(1)(a).

¹ Plaintiffs do not challenge the court's decision on that motion in this appeal.

² Before the court's decision on plaintiffs' motion, plaintiffs withdrew their unjust enrichment claim premised on the theory of violation of MCL 438.31a, conceding that this statute was preempted by federal law. This issue is not before this Court.

Plaintiffs' sole claim of error on appeal is that the court improperly denied their motion for leave to file their first amended complaint. We find no merit in plaintiffs' claim.

We review grants and denials of motions for leave to amend pleadings for an abuse of discretion. *Weymers v Khera*, 454 Mich 639, 654; 563 NW2d 647 (1997). Generally, a trial court should freely grant leave to amend pleadings if justice so requires. MCR 2.118(A)(2); *Weymers, supra*, 658. However, leave to amend a complaint may be denied where amendment would be futile. *Jenks v Brown*, 219 Mich App 415, 420; 557 NW2d 114 (1996). Amendment is futile if the amended complaint would be legally insufficient on its face. *McNees v Cedar Springs Stamping Co*, 184 Mich App 101, 103; 457 NW2d 68 (1990).

Recently, this Court decided *Newton v Bank West*, 262 Mich App 434; 686 NW2d 491 (2004), and held that residential mortgage transactions are exempt from the MCPA. *Id.* at 442. Accordingly, because plaintiffs' only claim in their proposed amended complaint was predicated upon the MCPA, it was not viable under the substantive law. Therefore, the trial court did not err in concluding that allowing the amendment would be futile.³

Affirmed.

/s/ Brian K. Zahra
/s/ Janet T. Neff
/s/ Jessica R. Cooper

³ Because it is clear that the MCPA cannot be applied to this type of transaction, we decline to address plaintiffs' alternative arguments that the court erred in its finding of fact, and its suggestion of federal preemption.